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Supreme Court, U.S.
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No. 95-1527

In The

Supreme Court of the United States

October Term, 1995

BRANDON JOSHUA HANEY, by next friend, Guardian of his Property, Margean Haney; and THE ESTATE OF DANA SHAUN HANEY, by Margean Haney, Administratrix,

Petitioners,

vs.

CITY OF CUMMING; WAYNE LINDSEY, in his capacity as Chief of Police for the City of Cumming; FORSYTH COUNTY; WESLEY WALRAVEN, in his individual capacity and his capacity as Sherif of Forsyth County; RUSSELL MATTHEWS; and RUSTY GRIFFIN,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eleventh Circuit correctly ruled that, on April 21, 1989, the law was not clearly established that officers who fail to notify competent authorities and take appropriate action regarding an inmate's psychiatric needs violate the Eighth and Fourteenth Amendment rights of the inmate, thereby entitling respondents to qualified immunity.

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OPINIONS AND JUDGMENT BELOW

Within the Appendix to the petition for writ of certiorari Petitioners have provided the order of the Honorable Jack T. Camp, Judge, United States District Court for the Northern District of Georgia, entered on August 24, 1993. Petitioners also include in their Appendix the November 27, 1995 decision of the United States Court of Appeals for the Eleventh Circuit [hereinafter referred to as the "Eleventh Circuit"] in *Haney v. City of Cumming, et al.*, No. 93-9183, 69 F.3d 1098 (11th Cir. 1995)[1], and the Eleventh Circuit's judgment entered November 27, 1995.

STATEMENT OF JURISDICTION

Respondents agree with petitioners' Statement of Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents agree that this action was brought pursuant to 42 U.S.C. § 1983 for alleged violations of rights secured by the Eighth and Fourteenth Amendments to the Constitution of the United States.

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[1] This decision, set forth at Appendix A to the petition for writ of certiorari, is incorrectly shown as having been issued by the Sixth, rather than by the Eleventh, Circuit. Nevertheless, Appendix A is the Eleventh Circuit's decision in this case.

STATEMENT OF THE CASE

This action stems from the suicide death of Dana Shaun Haney (hereinafter referred to as "Haney") on April 21, 1989. Petitioner Brandon Joshua Haney is the minor child of Haney and is prosecuting this action by his great-grandmother and guardian, Margean Haney. Margean Haney also is named as a petitioner in her capacity as administratrix of Haney's estate.

On July 3, 1990, petitioners filed this suit alleging civil rights violations pursuant to 42 U.S.C. § 1983, the Eighth Amendment and the Fourteenth Amendment. R1-1-1. Among other things, petitioners contended that respondents Russell Matthews and Rusty Griffin were deliberately indifferent to Haney's serious need for psychiatric care. R1-1-18.

Respondents herein filed their motion for summary judgment on October 8, 1992. R2-68-1. By order entered August 24, 1993, the district court granted in part and denied in part respondents' motion. Of significance to this Court is the district court's denial of summary judgment to respondents Griffin and Matthews on the basis of qualified immunity. R3-89-13-16.

Respondents filed their notice of appeal with the district court on September 23, 1993. R3-90-1. Petitioners filed their Notice of Cross-Appeal on October 6, 1993. R3-91-1. The Eleventh Circuit addressed only the district court's qualified immunity ruling and reversed the district court's denial of summary judgment on that basis. *Haney v. City of Cumming, et al.*, No. 93-9183, 69 F.3d 1098, 1102-03 (11th Cir. 1995).

The pertinent facts are as follows: On the afternoon of April 20, 1989, Haney and Jacqueline Hunt ("Hunt") were arrested by city of Cumming, Georgia police officers for theft of services. Exhibit Folder-Deposition of Roslyn Haygood, pp. 14-15, hereinafter "Haygood deposition;" Deposition of Ralph Buck Jones, pp. 24-25, hereinafter "Jones deposition;" Deposition of Aubrey Wayne Lindsey, pp. 6-7, hereinafter "Lindsey deposition." The two women were observed to be under the influence of some intoxicant based upon their slurred speech and unsteady gait. Exhibit Folder-Lindsey deposition at pp. 8-9, 18. Hunt and Haney were handcuffed, placed in a patrol car and taken to the city of Cumming jail, where they were booked. Exhibit Folder-Lindsey deposition, p. 7; Jones deposition, pp. 31-32.

After arriving at the jail, Hunt asked if she could have a cigarette. Exhibit Folder-Deposition of Jacqueline Anita Hunt, part 1, pp. 105-107, hereinafter "Hunt deposition-part 1." When she was told she could, Hunt reached in her purse, but instead swallowed approximately fifteen (15) Xanax pills "just to pass the time." *Id.* This was not a suicide attempt by Hunt, but merely intended to keep her high going because she knew it would be a long time before she could take any other drugs. *Id.*

Late that afternoon, Haney and Hunt were transported to the Forsyth County jail ("the Jail"). Exhibit Folder-Lindsey deposition, p. 13. Shortly after arriving there, Hunt was taken to the local hospital, and Haney was placed in the detoxification cell. Exhibit Folder-Deposition of Jimmy Lamar Waters, pp. 12-13, 18-19,

hereinafter "Waters deposition." Throughout the afternoon and evening, jailers Jimmy Waters ("Waters") and Jeff Lyles checked on Haney every fifteen to twenty (15-20) minutes. Exhibit Folder-Waters deposition, pp. 19, 21-22. She was responsive to them, although she did appear to be intoxicated, *i.e.*, her speech was slurred and she was unsteady on her feet. *Id.*

Wanda Tullis ("Tullis") came on duty at midnight and was briefed in general terms by Waters as to what had transpired during his shift and particularly as to Haney. Exhibit Folder-Deposition of Wanda Dale Tullis, p. 33, hereinafter "Tullis deposition;" Waters deposition, pp. 23-24. Tullis checked on Haney periodically throughout the night and found her asleep on each visit except for one. Exhibit Folder-Tullis deposition, pp. 58-60. At approximately 3:00 a.m., Haney asked Tullis if she could be taken to the hospital to see her friend, Hunt. *Id.* Tullis advised Haney that the hospital would not allow visitors at that hour of the morning and that she (Tullis) would ask the Jail Administrator the next morning whether Haney would be permitted to visit Hunt. *Id.*

Respondent Rusty Griffin ("Griffin") came on duty in the jail at eight o'clock on the morning of April 21, 1989 and was briefed by Tullis. Exhibit Folder-Deposition of Lewis B. Griffin, Jr., pp. 10-11, hereinafter "Griffin deposition." Haney was asleep when Griffin first saw her. *Id.* at p. 11. Keith Dampier came on duty at about 11:00 a.m., and Griffin told him to keep an eye on Haney because she was still considered intoxicated. Exhibit Folder-Deposition of D. O. Dampier, p. 18, hereinafter "Dampier deposition." When Dampier checked Haney's cell, he found her sitting quietly. *Id.* at p. 19. During some of Dampier's

other visits to Haney's cell, he and Haney discussed Hunt, how she (Hunt) was doing, and whether Haney could visit her. *Id.*

During the latter portion of the morning, Respondent Russell Matthews ("Matthews"), the Chief Criminal Investigator for the Forsyth County Sheriff's Department, visited the jail and was told that Haney was in the detoxification cell. Exhibit Folder-Deposition of Russell Matthews, pp. 11, 23, hereinafter "Matthews deposition." Matthews asked to speak with her, because he was conducting an investigation into local physicians who reportedly had written an excessive amount of prescription drugs and thought Haney might have some useful information. *Id.* at p. 11.

Matthews met with Haney in the conference room at the Sheriff's Department for approximately 30 to 45 minutes. Exhibit Folder-Matthews deposition, pp. 17-18. When Haney first came into the room, she told Matthews she wanted to know how Hunt was doing. *Id.* at pp. 12-14. Matthews did not know anything about Hunt, but offered to find out. *Id.* After checking with one of the jailers, Matthews told Haney that Hunt was in intensive care and could not have visitors. *Id.* Haney told Matthews that Hunt was the only one who loved her, that they loved one another, and that they had been lovers. Exhibit Folder-Matthews deposition, p. 14. Haney and Matthews then discussed the physicians from whom she had obtained prescription drugs. *Id.* at pp. 13-14. During the course of the interview, Haney smoked cigarettes and drank most of a pot of coffee. *Id.*

Matthews then asked Haney whether she had notified her parents that she was in jail; she said she had not. Exhibit Folder-Matthews deposition, pp. 14-15. He advised her to give them a call, and he took her back to where the telephone was located. *Id.* Haney then called her aunt, Lisa Addis, and told her she was in trouble again and that she was in jail. Exhibit Folder-Deposition of Lisa Jeannine Addis, pp. 25, 27-28, hereinafter "Addis deposition." Haney asked Addis to let everyone know where she was and that she was okay. *Id.* Addis noted that Haney's speech was slow and somewhat slurred, but other than that, she perceived nothing out of the ordinary. *Id.*

After the telephone call to her aunt, Haney was taken back to the detoxification cell. Exhibit Folder-Griffin deposition, p. 13. Sometime later, Rusty Griffin saw Haney standing on the sink or commode in her cell. *Id.* Griffin also noted at that time that Haney had torn up the mattress and/or the pillow in her cell. *Id.* Griffin then unlocked the door to talk to Haney. Exhibit Folder-Griffin deposition, Exhibit P-15, p. 2. When Griffin asked Haney what she was doing, Haney responded, "I might as well kill myself," or words to that effect. Exhibit Folder-Griffin deposition, p. 15. At the same time, however, Haney did not have anything around her neck.

Griffin removed the items in Haney's cell to prevent further destruction of property and called Keith Dampier to the cell to observe Haney. Exhibit Folder-Griffin deposition, pp. 17, 36. He then locked the door to the cell and went to look for a more senior officer. *Id.* at p. 17. The first such officer he encountered was Matthews. Because of Matthews' experience and position in the Sheriff's

Department and because of the rapport Matthews earlier had established with Haney, Griffin asked Matthews to come and speak with Haney. Exhibit Folder-Griffin deposition, pp. 17, 19-20; Matthews deposition, pp. 15, 23.

Matthews went to the detoxification cell and found Haney sitting on the floor in the corner, crying. Exhibit Folder-Matthews deposition, pp. 15-16. He told her, "I thought you weren't going to come back in here and get all upset until we found out what was going on [with Hunt]." *Id.* Haney asked if she could borrow $1.50 from Matthews to buy some cigarettes. Exhibit Folder-Matthews deposition, p. 16. Matthews said he would do even better and buy the cigarettes for her if she would behave and not get upset. *Id.*

Haney assured Matthews she would behave, but she told him she wanted to be taken to the city jail. *Id.* Matthews responded that he would see whether such arrangements could be made and left the cell. *Id.* Matthews contacted Roslyn Haygood ("Haygood"), the dispatcher at the city of Cumming Police Department, and inquired whether there was space at the city's jail for Haney. Exhibit Folder-Matthews deposition, pp. 16-17. Haygood told him to bring her on down. *Id.* Matthews then went to the Radio Room and asked the dispatcher to make arrangements for Haney's transport to the city jail. Exhibit Folder-Matthews deposition, p. 17. Matthews also asked that he be advised about Hunt's condition as soon as information was received. *Id.*

Matthews returned to Haney's cell with the cigarettes and told her he would give her the cigarettes if she would

"promise and shake [his] hand that [she] won't do anything funny now, and to cause them no problems. Okay?" Exhibit Folder-Matthews deposition, p. 47; R2-68-Affidavit of Russell Matthews, ¶7, hereinafter "Matthews Affidavit." Haney responded, "Okay." *Id.* Haney shook Matthews' hand, and he gave her his word that as soon as he heard something on Hunt he would get back to her. *Id.* Lastly, Haney asked for another cup of coffee, which she was given. *Id.*

Matthews told the jailer (Griffin) he believed Haney "would be OK now", and that he (Griffin) should notify Matthews when he heard something about Hunt. Exhibit Folder-Griffin deposition, p. 44; Matthews deposition, p. 17. Griffin thought nothing further about the statement Haney had made earlier, and Griffin had no further contact with Haney. Exhibit Folder-Griffin deposition, pp. 20, 41. Matthews then went to lunch; that was the last he ever saw of Haney. *Id.*

At approximately 12:16 p.m., Haney arrived at the city jail. Exhibit Folder-Deposition of William Jeffrey Lowe, p. 15, hereinafter "Lowe deposition." She requested that Haygood call her probation officer and that Haygood check on Hunt's condition at the hospital. Exhibit Folder-Haygood deposition, p. 22. Haney's speech was plain and she was stable; there was nothing out of the ordinary about her. *Id.* at p. 23. Haygood told Haney that her probation officer was on the way to the city jail. *Id.* Haney was then placed in a cell. Exhibit Folder-Haygood deposition, p. 25; Lowe deposition, p. 18.

Shortly after 1:00 p.m., while Haygood was delivering stamps to one of the inmates in the adjoining cell, she noticed that Haney was propped up against the cell bars with her back to the hall. Exhibit Folder-Haygood deposition, p. 36. Haygood looked through the window flap and could see that a sheet was tied around Haney's neck, and she screamed for Officer Buck Jones ("Jones") to check on Haney. Exhibit Folder-Haygood deposition, pp. 36, 49. Jones went to the cell and, upon opening the door, saw that Haney had a sheet tied around her neck. Exhibit Folder-Haygood deposition, p. 36; Jones deposition, p. 37. Haygood and Jones attempted unsuccessfully to untie the knot in the bed sheet. Exhibit Folder-Jones deposition, p. 37. The custodian at the jail eventually cut the sheet with his pocket knife, and CPR was begun. *Id.* Haney's body was removed from the city jail at approximately 2:08 p.m. None of these facts are in dispute in this case.

ARGUMENT

Rule 10 of the rules of this Court sets forth the basis upon which a writ of certiorari may be granted. The rule reads in pertinent part:

> Review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . .
>
> . . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10.

Respondents have assumed, based upon the content of the petition for writ of certiorari, that subsections (a) and (c) of Rule 10 are relied upon by petitioners in support of the instant petition. Apparently, petitioners contend that the Eleventh Circuit, by reversing the district court's denial of qualified immunity to Matthews and Griffin, "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10 (a) and (c). That question seemingly is whether and to what extent jailers in 1996 have duties under the Eighth and Fourteenth Amendments to provide for the serious medical and psychological needs of inmates in their custody. (Petition for Writ of Certiorari, p. i.) However, that question was not the one addressed by the Eleventh Circuit. Rather, in determining Matthew's and Griffin's entitlement to qualified immunity, the Eleventh Circuit focused only on what

law was clearly established on *April 21, 1989*. (Petition for Writ of Certiorari, Appendix A, pp. 10a-12a.)

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), this Court discussed the dimensions of its discretionary review and why cases, such as this one, are not among those for which such review will be granted.

> [W]e have considered anew whether this case is one in which "there are special and important reasons" for granting the writ of certiorari, as required by Supreme Court Rule 19, 28 U.S.C.A.
>
> * * *
>
> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . . "Special and important reasons" imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

Rice, 349 U.S. at 74 (citations omitted).

Applying the rationale of the *Rice* decision to this case, there can be no doubt that this case is not one presenting "special and important reasons" as required by Rule 10 (formerly Rule 19). Instead, the Court has been asked to decide a question of law not argued by the parties or decided by the courts below and not dispositive of this case in any event.

This case does not involve the alleged denial of *medical care* to Haney. Indeed, petitioners recognize as much at page 4 of their petition when they assert that Matthews and Griffin "were deliberately indifferent to Haney's serious need for psychiatric care." (Petition for Writ of Certiorari, p. 4.) Nor does this case involve the question of what duties jailers owe to inmates in April, 1996. With respect to the question of qualified immunity, the only issue is whether, as of April 21, 1989, the law governing the conduct of officers under the circumstances in question was clearly established. The Eleventh Circuit's determination that it was not does not conflict with prior decisions of this Court or of other courts of appeals.

A. The Eleventh Circuit's decision does not conflict with this Court's decision in *Estelle v. Gamble*, 429 U.S. 97 (1976).

At pages 12 through 15, petitioners attempt to demonstrate that the Eleventh Circuit's ruling "is directly in conflict with the principal (sic) established in *Estelle v. Gamble* [429 U.S. 97 (1976)]." (Petition for Writ of Certiorari, p. 15.) Petitioners contend that *Estelle* clearly established that "prison officials who are deliberately indifferent to the medical and psychological needs of an inmate are not entitled to qualified immunity." (Petition for Writ of Certiorari, p. 12.) Respondents submit that petitioners misstate the import of *Estelle* and overstate its holding and applicability to the facts of this case.

Estelle involved a claim by a state prisoner (Gamble) that he had been denied adequate medical care for his

back injury. Gamble was not suicidal or in need of psychiatric treatment, and the Court did not discuss that issue. Instead, this Court noted that, in the context of an Eighth Amendment claim, the government had an "obligation to provide medical care for those whom it is punishing by incarceration." *Estelle*, 429 U.S. at 103. In rendering its decision, this Court evaluated only the conduct of Dr. Gray, the state corrections department medical director. It did not discuss the actions of the defendants who were not physicians, because the Fifth Circuit did not separately consider those defendants' actions. *Estelle*, 429 U.S. at 108.

Thus, several facts distinguish *Estelle* from this case. *Estelle* involved a claim of inadequate medical treatment. This case does not. The Court's discussion of deliberate indifference in *Estelle* focused on the actions of a medical professional. Neither Matthews nor Griffin is a physician. The Eleventh Circuit's decision in this case is not at odds with *Estelle*.

Petitioners blatantly mischaracterize the Eleventh Circuit's decision as holding that present-day jailers are not required to provide any medical or psychiatric care to inmates under any circumstances. (Petition for Writ of Certiorari, p. 14.) Furthermore, their suggestion that the Eleventh Circuit permits (or ever permitted) jailers to allow inmates to bleed to death is without any support, either in the *Haney* decision or otherwise, and is wholly irrelevant to the question before this Court. (*Id.*)

Furthermore, *Estelle* did not serve to clearly establish the applicable law governing the conduct of respondents

Matthews and Griffin in April of 1989. Qualified immunity shields government officials performing discretionary functions from civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity is available to government officials whose "actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). The rights at issue must have been clearly established *in light of pre-existing law* so that "a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640 (emphasis supplied). "[T]he qualified immunity defense . . . provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Thus, a court's inquiry is focused on the "objective legal reasonableness" of the official's actions, and it looks to whether a reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official *at the time the conduct occurred*. *Anderson*, 483 U.S. at 640-41.

Respondents submit that *Estelle* did not serve to clearly establish the rights at issue in this case in April, 1989. Haney was not in need of medical attention, although petitioners contend she needed psychological/psychiatric care. Matthews and Griffin were not physicians, unlike Dr. Gray. To require Matthews and Griffin, or any similarly-situated law enforcement officers, to determine their obligations with respect to a potentially

suicidal inmate based on a reading of this Court's decision in *Estelle* would stand the principle of qualified immunity on its head and eviscerate its very purpose.[2]

B. The Eleventh Circuit's decision does not conflict with decisions of the First, Fifth or Eighth Circuits as to whether the law was clearly established in April, 1989.

Petitioners next try to obtain review by this Court by arguing that the Eleventh Circuit's decision in this case conflicts with the decisions of the First, Fifth and Eighth Circuits. (Petition for Writ of Certiorari, pp. 21-22.) That is, petitioners imply that the applicable law *was* clearly established in the First, Fifth and Eighth Circuits as of April 21, 1989. A brief look at each of the four (4) cases cited by petitioners demonstrates that petitioners' contention in this regard is not well-founded.

Unlike many of the cases cited by petitioners, *Rellergert v. Cape Girardeau County, Mo.*, 924 F.2d 794 (8th Cir. 1991), *did* involve the suicide of an incarcerated inmate. (Petition for Writ of Certiorari, p. 21.) While the Eighth Circuit concluded that the law was clearly established *in February, 1991* that "jailers must take measures to prevent inmate suicide once they know of the suicide

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[2] Nor do this Court's decisions in *Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970 (1994), and *Helling v. McKinney*, 509 U.S. ___, 113 S.Ct. 2475 (1993), impact on the Eleventh Circuit's decision, because, *inter alia*, these cases involve vastly different facts (inmate assaults and exposure to second-hand tobacco smoke, respectively) and were decided years after Haney's death. (Petition for Writ of Certiorari, p. 19.)

risk," it stated that the law was *not* clearly established as to what those measures were required to be. "[T]here are no hard and fast parameters and . . . each case turns on its own peculiar facts." *Rellergert*, 924 F.2d at 797. Respondents submit that the decision in *Rellergert* is in accordance, rather than in conflict, with the Eleventh Circuit's decision in this case.

Consolo v. George, 58 F.3d 794 (1st Cir. 1995), cited by petitioners at page 21 of their petition, involved a claim by an arrestee that there was deliberate indifference to his *medical* needs (broken bones) during 1990. There, the First Circuit stated that it had been clearly established since at least 1983 that a pre-trial detainee is entitled to medical attention for serious medical needs. Certainly, this decision does not demonstrate any conflict between the First and Eleventh Circuits, because the case now before the Court does not deal with alleged medical needs – it deals with alleged psychiatric needs.

In *Stokes v. Delcambre*, 710 F.2d 1120 (5th Cir. 1983), also cited at page 21, an inmate brought suit for physical injuries he received at the hands of fellow inmates who assaulted him. The dissimilarity between the facts in *Stokes* and the facts in this case is obvious.

Finally, petitioners cite *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996). (Petition for Writ of Certiorari, pp. 21-22.) That case, decided subsequent to the Eleventh Circuit's decision herein, dealt with a suicide that occurred in July, 1989. Significantly, the Fifth Circuit in *Hare* noted that its prior approach to claims of failure to protect from harm had been unclear and "peripatetic," and stated that its goal in deciding the case was "to

clarify our case law and to articulate the proper legal measures of a State's duty to tend to a pretrial detainee posing a risk of suicide." *Hare*, 74 F.3d at 643. Respondents submit that the court in *Hare* was doing what it recognized it had not done before – clearly establishing the law in the Fifth Circuit regarding the constitutional duty owed a potentially suicidal inmate. If this did not occur until 1996, the applicable law in the Fifth Circuit could not have been clearly established in 1989.

Petitioners either misunderstand the significance of the Eleventh Circuit's decision or they are intentionally twisting it into something that it is not. The one and only question addressed and answered by that court is this: Was it clearly established on April 21, 1989 that officers who fail to notify competent authorities and take appropriate action regarding an inmate's possible psychiatric needs could be liable under 42 U.S.C. § 1983? (Petition for Writ of Certiorari, Appendix A, pp. 10a-11a.) None of the decisions cited by petitioners at pages 21-22 of their petition bear upon this question. Petitioners contrived "conflict" between the Eleventh Circuit and other courts of appeals is nothing more than that.

In the final analysis, petitioners are not seeking a review by this Court of the Eleventh Circuit's ruling in this case. What they are seeking to obtain is an academic ruling as to the state of the present-day law in the hopes that they can get a chance to present their arguments as to "what the law should be" to a jury. Respondents submit such a goal is not among the "special and important reasons" for which review on certiorari was designed.

CONCLUSION

The petition for writ of certiorari should be denied in this matter, because the justiciable concerns required by Rule 10 of the rules of this Court are not present. There is no need for this Court to decide the broad question presented by petitioners, because such a decision is not needed to resolve the case now before this Court. An examination of the facts of this case and the applicable law is all that is needed. Petitioners' attempt to transform this case into something that it is not should be rejected.

Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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